

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,	:	Case No. 1:18CR109
	:	
Plaintiff,	:	Judge Black
	:	
v.	:	
	:	
ANDREY SHUKLIN, ET AL.,	:	
	:	
Defendants.	:	
	:	
	:	

**SECOND MOTION FOR BOND
AND MEMORANDUM IN SUPPORT**

Now comes Defendant, Andrey Shuklin, by and through counsel, and respectfully moves this honorable Court to release him on bond with any conditions that this Court deems appropriate, including the surrender of his passport along with his wife's and child's passports. This Second Motion for Bond is warranted because an inmate at Butler County jail has tested positive for COVID-19.

The grounds for this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Stephanie F. Kessler

STEPHANIE F. KESSLER (0092338)

MARTIN S. PINALES (0024570)

Pinales, Stachler, Young & Burrell Co., LPA

455 Delta Ave., Suite 105

Cincinnati, Ohio 45226

(513) 252-2732

(513) 252-2751

skessler@pinalesstachler.com

eeckes@pinalesstachler.com

MEMORANDUM IN SUPPORT

An inmate at the Butler County jail, where Andrey Shuklin is detained pre-trial, has tested positive for COVID-19. <https://www.whio.com/news/local/coronavirus-inmate-tests-positive-butler-county-jail/5BKJ634VTBFZDPG3JV4AA5B6OU/>. As of April 6, 2020, SARS-COV-2, a novel coronavirus causing COVID-19, has infected over 1.2 million people worldwide, leading to at least 70,028 deaths, with at least 336,776 confirmed cases and 9,655 deaths in the United States.¹ The President has declared a national emergency.² The CDC has advised the general public to cover their face in public.³

Because of the virus' long latency period, studies show that "stealth transmission" by unknowingly-infected persons with few or no symptoms plays a major role in fueling the pandemic.⁴ A study in the New England Journal of Medicine found that the "virus can remain viable and infectious in aerosols for hours and on surfaces up to days."⁵ A University of Nebraska study found the virus in air samples in and outside of the hospital rooms of COVID-19 patients, suggesting "that virus expelled from infected individuals, including from those who are only mildly

¹ *Coronavirus Map: Tracking the Spread of the Outbreak*, N.Y. Times (March 18, 2020), <https://nyti.ms/2U4kmud> (updated regularly).

² Taylor Telford, *U.S. markets surge as massive economic stimulus plan takes shape to offset coronavirus*, Wash. Post, (March 18, 2020) , <https://www.washingtonpost.com/business/2020/03/17/us-stock-markets-today-fed-funds/>.

³ Colin Dwyer, *CDC Now Recommends Americans Consider Wearing Cloth Face Coverings In Public*, NPR, (April 3, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826219824/president-trump-says-cdc-now-recommends-americans-wear-cloth-masks-in-public>.

⁴ Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, NY Times, (March 31, 2020), <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html> ("as many as 18 percent of people infected with the virus on the Diamond Princess cruise ship never developed symptoms, according to one analysis").

⁵ Neeltje van Doremalen, et. al, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, New England J. Med., (March 17, 2020), [nejm.org/doi/10.1056/NEJMc2004973](https://doi.org/10.1056/NEJMc2004973).

ill, may be transported by aerosol processes in their local environment.”⁶ This has severe repercussions in crowded indoor environments.

Conditions of pretrial confinement create the ideal environment for the transmission of contagious disease.⁷ Inmates cycle in and out of detention facilities from all over the state, and people who work in the facilities including correctional officers, and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited.⁸ According to public health experts, incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;” “infection control is challenging in these settings.”⁹ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.¹⁰ In China, officials have confirmed the coronavirus spreading at a rapid pace in Chinese prisons, counting 500 cases.¹¹ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19

⁶ Joshua Santarpia et. al., *Transmission Potential of SARS-CoV-2 in Viral Shedding Observed at the University of Nebraska Medical Center*, medRxiv, (March 26, 2020) <https://www.medrxiv.org/content/10.1101/2020.03.23.20039446v2.full.pdf> (data indicate “significant environmental contamination in rooms where patients infected with SARS-CoV-2 are housed and cared for, regardless of the degree of symptoms or acuity of illness.”).

⁷ Joseph A. Bick (2007). Infection Control in Jails and Prisons. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910>.

⁸ Laura M. Maruschak et al. (2015). Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpi1112.pdf>

⁹ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

¹⁰ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at <https://bit.ly/2TNcNZY>.

¹¹ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020) at <https://bit.ly/2vSzSRT>.

has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”¹² Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.¹³ In the U.S. steps are already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and to reduce jail populations by discouraging the refusing the admission of individuals arrested on non-violent misdemeanor charges.¹⁴

The Bail Reform Act provides for the “temporary release” of a person in pretrial custody “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i). To be clear, this motion is a distinct and separate request for release engendered by the current COVID-19 crisis; Shuklin and counsel recognize the prior denial of his request for bond. That said, Shuklin incorporates the arguments made during prior request for release, particularly as to his lack of risk of flight risk if released. In Mr. Shuklin’s case, the risk to life from the COVID-19 pandemic, particularly the danger it presents for incarcerated persons, outweighs the risk of flight concerns found by this Court. Mr. Shuklin reports that although some jail personnel are wearing face masks, most are not. Additionally, the inmates are not permitted to have hand sanitizer and

¹² Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at <https://cnn.it/2W4OpV7>.

¹³ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, The Associated Press (Mar. 7, 2020) at <https://apnews.com/af98b0a38aaabedbc059092db356697>.

¹⁴ In New York Brooklyn District Attorney Eric Gonzalez, joined by public health experts, has asked Governor Cuomo to grant emergency clemencies to elderly and sick prisoners (Sarah Lustbader, *Coronavirus: Sentenced to COVID-19*, The Daily Appeal (Mar. 12, 2020) at <https://theappeal.org/sentenced-to-covid-19/>); Cuyahoga County (Ohio) is holding mass pleas and bail hearings to reduce the current jail population (<https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>); Mahoning County (Ohio) jail is refusing all non-violent misdemeanor arrestees (<https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus->

are not able to practice social distancing. From Mr. Shuklin's perspective his life—not only his liberty—is on the line, creating a powerful incentive to abide by any release conditions the Court may impose and changing the calculus that initially led to the denial of bail in this case.

For the foregoing reasons, Andrey Shuklin respectfully moves this Court to order that he be released pretrial with any conditions that this Court deems appropriate, including the surrender of his passport along with his wife's and child's passports. Mr. Shuklin respectfully requests that this Court set an immediate court date to hear this motion.

Respectfully submitted,

/s/ Stephanie F. Kessler

STEPHANIE F. KESSLER (0092338)

MARTIN S. PINALES (0024570)

Pinales, Stachler, Young & Burrell Co., LPA

455 Delta Ave., Suite 105

Cincinnati, Ohio 45226

(513) 252-2732

(513) 252-2751

mpinales@pinalesstachler.com

skessler@pinalesstachler.com

[outbreak/](#)); see also Collin County (TX) (<https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>);

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via this Court's electronic filing system on all counsel of record on this 16th day of April 2020.

/s/ Stephanie F. Kessler

STEPHANIE F. KESSLER (0092338)